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E-filing

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 MARLON MONGER,

13 Plaintiff,

14 v.

15 INTERNATIONAL EFFECTIVENESS
CENTER; TARYK ROUCHDY; and
16 MARTHA MARTINEZ,

17 Defendants.
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**ORIGINAL
FILED**

AUG 28 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MHP

CV-08 Case No.

4110

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

1 Plaintiff MARLON MONGER ("Monger") hereby alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This is an employment-discrimination and wage-claim action brought under the
4 laws of the United States and the State of California. In January 2006, defendant International
5 Effectiveness Center ("IEC"), through its founder and Chief Executive Officer Taryk Rouchdy
6 ("Rouchdy") hired Marlon Monger to provide interpretation and translation services to medical
7 patients. Monger has AIDS. From the beginning of his employment with IEC, Monger
8 informed Rouchdy that he required minimal, reasonable accommodations for a chronic medical
9 condition. Rouchdy agreed to provide those accommodations and hired Monger.

10 2. Monger was an excellent employee who consistently outperformed expectations.
11 On Monger's first day at IEC, Rouchdy was so impressed by Monger's capabilities and
12 performance that he gave Monger a 33% pay raise. Nevertheless, Monger's supervisor Martha
13 Martinez ("Martinez") began a continuing campaign of persistent, illegal mistreatment against
14 Monger. Martinez's general demeanor at IEC was hostile, cruel, and unprofessional, but in
15 Monger's case she went beyond general rudeness and began mistreating Monger specifically
16 because of his disability. Martinez's abuse of Monger continued over many months and took
17 numerous forms. Some of the most egregious examples are as follows:

- 18 • Shortly after he started at IEC, Martinez insisted Monger give up the
19 reasonable accommodations to his work schedule he had negotiated with
20 Rouchdy. Monger initially complied, but found that compliance worsened
his medical condition. When he asked Martinez to reinstate his original
work schedule, she refused.
- 21 • Martinez told Monger that he was no longer entitled to take time off work
22 for medical appointments, even though those appointments were essential
to keep his health strong and his illness at bay.
- 23 • Because Monger's illness causes him periodic, intense gastrointestinal
24 distress during the day, he needs to have access to and periodically use the
bathroom to relieve that distress. Martinez frequently mocked Monger's
25 bathroom usage in front of the entire office. Eventually, she forbade
Monger from taking any breaks during his work day other than to use the
26 bathroom, and instructed him he needed to tell her each time he used the
bathroom prior to doing so.
- 27 • Eventually, Monger asked Rouchdy to intervene and overrule Martinez's
28 denials of reasonable accommodations as to his work schedule and ability
to take time to see his doctors. Rouchdy refused to engage in a good-faith

interactive process with Monger regarding reasonable accommodations, telling him he would have to work things out with Martinez.

- In August 2006, during a conversation about Monger's then-upcoming surgery on his right elbow, Martinez screamed at Monger, in front of the entire IEC office, that he would no longer be able to take off work for any medical appointments. When Monger asked to speak to her in private, Martinez screamed, again in front of the whole office, **"I don't care about your disability!"** Monger had not discussed the fact or extent of his disability with his peers at the office.
- Following that incident, Martinez forbade Monger from returning to work after his surgery until he recovered the full use of his right arm, even though IEC had ample work Monger could have performed that did not require the use of his right arm.
- In response, Monger filed a complaint with the San Francisco Human Rights Commission and caused that complaint to be served on IEC. IEC never responded. Instead, they began excluding Monger from the weekly work schedule, reducing his hours from roughly 35 to 40 per week to just five per week.
- Finally, in February 2007, even though IEC had a substantial amount of the very work at which Monger was proven to excel, they cited a lack of available work and terminated him.

3. Martinez was the prime culprit in this campaign of disability discrimination and harassment, but Rouchdy was aware of, ratified, and approved Martinez's actions. Monger attempted to persuade Rouchdy to require Martinez to treat him decently, with dignity, and as the law requires, but Rouchdy consistently failed to rein in Martinez. Eventually, Rouchdy directly told Monger that he would no longer consider Monger's complaints, and that Monger had to sort out any employment issues with Martinez.

4. Based on the above, and the additional facts disclosed below, Monger brings this suit for disability discrimination in his employment under federal and California law.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331, because Monger asserts claims under the Americans with Disabilities Act, 42 U.S.C. §§ 12112 and 12203, and the Fair Labor Standards Act, 29 U.S.C. § 207, which are statutes of the United States. This Court further has supplemental subject-matter jurisdiction over Monger's disability-discrimination and tort claims under California law, because those claims share the same common nucleus of operative facts with Monger's federal-law claims, and are so closely related

1 to Monger's federal-law claims that all of Monger's asserted claims are part of the same case and
2 controversy.

3 6. This Court has personal jurisdiction over IEC, which is a California business with
4 its principal location in the State of California and this judicial District. All the events relevant
5 to this Complaint occurred during the time when Monger was employed by and performed work
6 for IEC in the State of California and this judicial District.

7 7. This Court has personal jurisdiction over Rouchdy and Martinez, each of whom,
8 on information and belief, are citizens and residents of the State of California and this judicial
9 District, and resided and worked within the State of California and this judicial District when all
10 events relevant to this lawsuit occurred. Moreover, all the actions taken by Rouchdy and
11 Martinez that form the basis of this Complaint were committed within the State of California and
12 this judicial District.

13 8. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2), because all
14 defendants to this action reside in this District and because a substantial part, if not all, of the
15 events or omissions giving rise to Monger's claims occurred in this District.

16 **PARTIES**

17 9. Plaintiff Marlon Monger is, and at all relevant times mentioned in this Complaint
18 was a resident of the State of California and the City and County of San Francisco. He was an
19 IEC employee from January 19, 2006 through February 2, 2007.

20 10. Defendant International Effectiveness Center is an entity that transacts business in
21 and has its principal place of business in the State of California and this District, at 21 Tamal
22 Vista Boulevard, Corte Madera, CA 94925-1130. At all dates and times relevant to this
23 Complaint, IEC maintained an office at 360 Pine Street, Suite 218, San Francisco, California
24 94104-3306, which is where Monger reported for work during his time at IEC.

25 11. Defendant Taryk Rouchdy is IEC's owner and chief executive. He is a resident of
26 the State of California. At all times relevant to this Complaint, Rouchdy exercised supervision,
27 discretion, and direct control over all IEC employees, including Martinez and Monger.

28 ///

12. Defendant Martha Martinez is IEC's Vice President. She is a resident of the State of California. At all times relevant to this Complaint, Martinez was Monger's direct supervisor at and an officer of IEC and exercised discretion and direct control over Monger's working hours and responsibilities.

FACTUAL ALLEGATIONS

Monger's Disability

13. Marlon Monger is a native of Costa Rica, who first moved to the United States in 1982 at age 16. When Monger first moved to the United States, he spoke only Spanish. Over the course of the next several years, Monger taught himself English and obtained his General Educational Development certificate. In 1995, he became a United States citizen, and, in 1996, he received a Bachelor of Arts degree in French and psychology from New York University. He currently speaks Spanish, French, and English fluently.

14. Monger contracted the Human Immunodeficiency Virus ("HIV"), a retrovirus that suppresses the human immune system, in 1998, and was diagnosed with Acquired Immunodeficiency Syndrome ("AIDS") in or about 2004. AIDS is a set of symptoms resulting from damage to the human immune system, commonly believed to be caused by HIV. The condition progressively reduces the effectiveness of the immune system, leaving afflicted individuals susceptible to, among other things, opportunistic cardiopulmonary and gastrointestinal infections, tumors, and malignancies. The AIDS pandemic has killed over 2 million people worldwide. Although AIDS and HIV can be treated through regular use of expensive anti-retroviral drugs, these treatments only can slow the course of the disease. There is currently no known vaccine or cure for AIDS; a person who contracts the disorder will live with it for the rest of his or her life.

15. Accordingly, Monger needs to be constantly vigilant in managing his health and monitoring his physical condition. Since his diagnosis, he has treated his disease through a daily cocktail of anti-retroviral medication, which is essential to halt the progress of the AIDS virus and to keep Monger alive and able to live a reasonably normal life. Unfortunately, the medication also causes serious gastrointestinal side effects. Monger takes his medicine every

1 day on waking up, and shortly thereafter suffers acute nausea, which is frequently accompanied
2 by vomiting and/or diarrhea. Although these effects are most acute first thing in the morning,
3 they recur throughout each day, requiring Monger to make periodic, though not necessarily
4 lengthy, trips to the bathroom and forcing him to have access to a bathroom during work hours.
5 Moreover, Monger's condition has taken its toll on his physical constitution. In addition to
6 leaving him vulnerable to infection, AIDS leaves Monger constantly fatigued, and has caused
7 him peripheral neuropathy (i.e., numbness in extremities) and headaches.

8 16. Monger's disability substantially limits several of his major life activities. First, it
9 limits him in the major life activity of working. Because Monger suffers severe gastrointestinal
10 distress several times during the work day as the course of his anti-retroviral treatment, and
11 because his condition leaves him weakened, he is significantly restricted as to the condition and
12 manner in, and duration during which he can perform a broad range of jobs in various classes,
13 which require significant physical exertion or substantial mobility, or do not permit regular
14 access to bathroom facilities.

15 17. Second, Monger's disability limits him in the major life activity of free mobility.
16 In contrast to the average person in the general population, who is able to enjoy relatively
17 unrestricted freedom of movement during waking hours, Monger's severe gastrointestinal
18 distress forces him to remain effectively tethered to a bathroom facility at all times, preventing
19 him from spending more than one hour without ready access to such a facility. His disability
20 also required that he regularly see a variety of medical specialists to keep track of his physical
21 condition and ward off the opportunistic infections that AIDS enables.

22 18. Third, Monger's disability substantially limits him in the major life activity of
23 physical exertion. Because Monger suffers severe gastrointestinal distress several times during
24 the work day as the course of his anti-retroviral treatment, and because his condition leaves him
25 weakened, he is significantly restricted as to the condition and manner in, and duration during
26 which he can exert himself physically.

27 19. Further, as will be described in greater detail below, Monger's supervisors at IEC
28 perceived and/or treated him as physically disabled. Although Monger's was able to fully

1 perform all his assigned duties at IEC with distinction, Monger's IEC supervisors Rouchdy and
2 Martinez perceived and/or treated him as being substantially limited in the major life activity of
3 working a general clerical office job, because of his need for regular use of bathroom facilities
4 and periodic visits to various medical professionals. As is set forth in the paragraphs that follow,
5 Monger's employer believed and/or behaved as though Monger's disability prevented him from
6 working effectively in IEC's generic office environment. Indeed, Monger's supervisors at IEC
7 set up numerous obstacles designed to impede Monger from performing his job duties. Despite
8 this, Monger continued to perform his duties superlatively until his termination.

9 **Monger's Initial Hiring by IEC**

10 20. In January 2006, Monger responded to an IEC advertisement seeking interpreters
11 on the online job-listings site Craigslist.com. As noted above, Monger is fluent in three
12 languages. As of January 2006, he had approximately eight years of experience both in
13 translation—the conversion of written words from one language to another—and
14 interpretation—the conversion of spoken words from one language to another. Specifically, he
15 had substantial experience in performing interpretation and translation for medical patients, the
16 population segment that IEC typically serves.

17 21. Upon responding to the advertisement, Monger was called to IEC's office in San
18 Francisco for an interview with Rouchdy, IEC's founder and owner. Rouchdy offered Monger a
19 position as an interpreter on the spot at a salary of \$15 per hour.

20 22. In response, Monger suggested that, given his experience and college degree, he
21 was overqualified to be only an interpreter. Rouchdy agreed, but explained that he needed to
22 hire a large number of interpreters immediately because IEC had just signed a significant
23 contract with Contra Costa County to provide interpretation services to county hospitals. Prior to
24 landing the Contra Costa County contract, IEC's business had consisted almost entirely of
25 written-translation work. Rouchdy told Monger that Monger would start at IEC as an interpreter,
26 but would be promoted to a supervisory position shortly afterward.

27 23. During the interview, Rouchdy told Monger that the job required him to be in the
28 office by 7:00 a.m. Monger told Rouchdy that he had a chronic illness that required him to take

1 medication that caused severe gastrointestinal side effects, and that, as a result, he needed to be
2 at home early in the morning, when these side effects were most severe. Monger did not tell
3 Rouchdy at the initial interview that he had AIDS. After explaining his condition, Monger asked
4 Rouchdy if he could start work at 9:00 a.m. Rouchdy countered by asking if he could begin at
5 8:30 a.m., and Monger accepted the job on that condition. At the same time, Monger told
6 Rouchdy that, because of his illness, he would need to design his work schedule around frequent
7 medical appointments. Rouchdy promised Monger this would not be a problem and IEC would
8 accommodate his needs.

9 24. Monger began work as an interpreter at IEC on or about January 19, 2006. After
10 one day of light training, Rouchdy assigned him to work on the Contra Costa County hospital
11 account. On his first day of work at IEC, Monger began taking phone calls and handling
12 interpretations. Initially, he performed all of his work over the telephone from IEC's offices in
13 San Francisco.

14 25. It did not take long for Rouchdy to recognize that Monger excelled at his job. In
15 the morning of Monger's first day at IEC, and first day doing interpretation work, Rouchdy
16 complimented Monger's interpretation skills extensively, and spontaneously gave Monger a 33%
17 pay raise, boosting his salary from \$15 per hour to \$20 per hour.

18 26. Monger quickly became known as the best interpreter and translator at IEC. He
19 received the majority of interpretation work at IEC, and also was given the most difficult
20 translation projects. He also was given responsibility for training new interpreters as they were
21 hired. For his first four or five months at IEC, he worked exclusively performing interpretation
22 work over the telephone for nurses and patients at Contra Costa County hospitals.

23 27. IEC had more work to do in performing the Contra Costa County contract than its
24 limited staffing allowed. Rouchdy informed Monger that he had recently invested approximately
25 \$250,000 in call-routing equipment, which enabled IEC to route phone calls to other numbers,
26 both inside and outside the country. At the time Monger began work at IEC, the company was
27 not using this equipment extensively, although they did use it to route calls to a few interpreters
28 who were allowed to perform work from home. After a few weeks on the job, Monger, knowing

1 that Rouchdy was hoping to hire additional workers to help perform the Contra Costa County
2 contract, suggested that this call-routing equipment could enable IEC to hire interpreters in other
3 countries. Monger told Rouchdy that he knew a number of fluent English speakers in his native
4 Costa Rica who could potentially perform interpretation work for IEC. Rouchdy suggested
5 Monger interview some of these people and, if appropriate, hire them to perform interpretation
6 work at IEC. Monger agreed, and proceeded to interview a number of interpreters in Costa Rica.
7 He kept Rouchdy informed throughout this process. On March 4, 2006, Monger wrote an e-mail
8 to Rouchdy, proposing that IEC hire a number of Costa Rican interpreters. That same day,
9 Rouchdy replied, agreeing with Monger's suggestion, specifying some of the conditions of their
10 employment, and asking Monger to hire them. Rouchdy wrote that

11 I would very much appreciate your help in calling the candidates. We will of
12 course re-imburse you for the cost of the calls and your time.

13 I will not call them, so that we do not duplicate the work. If you can work out the
14 schedules with them, and let's plan on getting them started as soon as possible.
You can hire them, and have them email their schedules to us.

15 Once all this has been taken care of, I will call them to introduce myself, but I will
16 leave the recruiting and hiring to you.

17 Monger proceeded to hire the Costa Rican interpreters, and, over the next several months, took
18 responsibility for supervising their work at IEC.

19 28. As Monger had discussed with Rouchdy prior to his hiring, his illness forced him
20 to take time off for frequent doctor's appointments. In order to avoid causing any
21 inconvenience, Monger always notified Rouchdy or others at IEC as far in advance as possible
22 when he needed to see the doctor. He was never paid for any sick leave nor any time spent at
23 medical appointments. On several occasions, he even took calls for IEC while at the doctor's
24 office.

25 29. During these early months working on the Contra Costa County contract, Monger
26 received only praise from Rouchdy for his work for IEC. Rouchdy never reprimanded Monger,
27 gave him negative feedback, or told him he needed to improve his work performance.

28 30. After he had worked at IEC for about one month, Monger told Rouchdy about his
AIDS diagnosis—and the fact that the drugs he was taking caused severe nausea, vomiting, and

1 diarrhea, particularly in the morning—in order to explain his need to start work at 8:30 a.m. and
2 periodically to leave IEC during work hours for medical appointments. He specifically asked
3 Rouchdy to keep the information about his medical condition confidential. Rouchdy agreed, but
4 told Monger he would need to inform his second-in-command and IEC's Vice President, Martha
5 Martinez. Monger is informed and on that basis believes that Rouchdy did inform Martinez of
6 Monger's AIDS diagnosis.

7 **Conflicts with Martha Martinez**

8 31. In her role as IEC's Vice President, Martha Martinez managed the IEC office in
9 San Francisco during Monger's tenure at the company. Prior to IEC's obtaining the Contra
10 Costa County contract, when IEC's business was overwhelmingly translation services, Martinez
11 supervised the translators at IEC. When IEC branched out into interpretation in its work for the
12 Contra Costa County hospitals, Rouchdy also assigned Martinez to supervise IEC's interpreters.
13 But in practice, during his first several months at IEC, Monger frequently received assignments
14 directly from, and reported directly to, Rouchdy, rather than Martinez.

15 32. Martinez frequently engaged in abusive, hostile behavior in the office. She would
16 quickly become furious over insignificant things, or for no discernible reason at all. When she
17 became angry, she would scream at her subordinates, using profane, belittling language. She
18 frequently disregarded federal and California labor law and refused to permit employees to take
19 breaks during the work day. She would justify this illegal treatment on the ground that, if an
20 employee took a break, he or she might miss an incoming call. On occasions when an employee
21 would miss a call because he or she was taking a legally-mandated break, Martinez would
22 become angry, describing subordinates as "retarded," or yelling, "What the fuck am I paying
23 these people for?" Frequently, Martinez would insist employees return early from lunch or stay
24 after hours, to make up for incoming calls supposedly missed while those employees were taking
25 legally-mandated breaks. Often, she would refuse to let employees take breaks at all. Even
26 when she did permit breaks, the specter of having to stay late to make up for missed calls would
27 lead IEC employees to skip breaks to which they were legally entitled. As a direct result of
28 Martinez's unprofessional, demeaning conduct, IEC suffered substantial turnover among its

1 translators, many of whom left their positions within weeks, or even days, of being hired.

2 33. Martinez was unfriendly to Monger from the moment Rouchdy hired Monger as
3 an interpreter. After Rouchdy gave Monger so much autonomy in his interpretation work, and
4 supervisory power over the Costa Rican interpreters and translators, Martinez became even more
5 unfriendly and resentful toward Monger.

6 34. Indeed, it was around the time Monger began hiring and working with the Costa
7 Rican interpreters that Martinez first began taking adverse actions against Monger. In or about
8 March 2006, Martinez informed Monger he would need to begin coming to work at 8:00 a.m.
9 Although Monger told Martinez that it would be difficult for him to do that, he agreed to try,
10 even though Rouchdy had agreed he could come in at 8:30 a.m. Given Martinez's generally
11 hostile demeanor and capricious acts toward subordinates, Monger was afraid that Martinez
12 might fire him if he resisted. At the same time, Martinez told Monger that he could no longer
13 take time off work for medical appointments.

14 35. Because Monger felt strongly that he needed, and was entitled, to leave work for
15 his medical appointments, he met with Rouchdy and raised the issue privately. He asked
16 Rouchdy for permission to leave work for medical appointments, as he had been doing and as
17 Rouchdy had agreed he could do. Rouchdy agreed, overruling Martinez on that point.

18 36. With respect to Martinez's other decree, that Monger arrive each morning at 8:00
19 a.m., Monger initially attempted to comply. In fact, Monger initially suggested that he start work
20 at 8:00 a.m. only on days when he had a doctor's appointment, before realizing that, because he
21 had appointments an average of four days per week, this "compromise" still would require him
22 to be at work at 8:00 a.m. nearly every day. Monger continued to suffer severe gastrointestinal
23 distress each morning, which made compliance with Martinez's demands difficult for him. He
24 continued to need medical care for this and other AIDS-related health problems, and sometimes
25 had to leave IEC during work hours in order to see his doctors. As noted above, although
26 Monger had not disclosed to Martinez that he had AIDS or any specific condition, Monger is
27 informed and on that basis believes that Rouchdy informed Martinez of Monger's AIDS
28 diagnosis. In any event, Martinez was aware that Monger had severe gastrointestinal problems,

1 and that his request for reasonable accommodations to his work schedule—a later start time and
2 periodic time off for medical appointments—arose from those health problems.

3 37. IEC had no legitimate business need to require Monger to be in the office before
4 8:30 a.m. Monger could have performed all his job duties from his home. IEC had a system in
5 place that could route incoming calls to offsite telephone numbers, which permitted employees to
6 work from home. Indeed, when Monger began work at IEC, IEC was using this system to permit
7 one interpreter to do work from home. Shortly thereafter, in March 2006, IEC began using this
8 same system to permit the Costa Rican interpreters to work for IEC from outside the United
9 States. Had Monger answered calls from home, no IEC client would have known the difference.
10 Moreover, another full-time IEC interpreter, Francisca Darling (“Darling”), arrived in the office
11 at 7:00 a.m. every weekday. IEC’s interpreters generally received an extremely small number of
12 calls (and often no calls at all) before 9:00 a.m., and Darling, and other IEC interpreters who
13 were available from their homes, easily could have handled any calls that came in before that
14 hour, without any help from Monger. By contrast, IEC **did** have a legitimate business need for
15 Monger to stay later than 5:00 p.m. IEC received far more calls after 5:00 p.m. than it did before
16 8:30 a.m., and in practice Monger often stayed late to respond to these calls.

17 38. Further, IEC was more than willing to accommodate the unorthodox schedule of
18 another interpreter, Marcella Morales, who worked part-time while attending school. IEC
19 permitted Morales to work a flexible schedule, coming to work at various times during weekday
20 afternoons, depending on her school obligations.

21 **Monger’s Request for a Reasonable Accommodation**

22 39. Accordingly, on or about May 23, 2006, Monger wrote an e-mail to Rouchdy and
23 Martinez summarizing his concerns and making a formal request that IEC permit him to begin
24 work at 8:30 a.m. as a reasonable accommodation for his disability. He wrote:

25 Based on the most recent conversations we’ve had about the request to start work
26 at 8:30 am rather than [sic] 8:00 am, I have decided to write this e-mail since it is
27 difficult for me to speak about these very personal issues in person. I’m sure we
28 will work it out without a problem, but I just wanted to clarify some things
because, I feel that, perhaps, I have not properly conveyed the significance of my
condition.

1 Unfortunately, I am going through some changes in my medication which have
2 caused a significant amount of discomfort in my life. These medicines can take
3 two to three months to start working properly and for the body to get used to the
4 side effects. The thing is that, apart from all the symptoms that the chronic illness
5 causes, I also have to deal with strong side effects from these medicines daily
6 such as strong nausea, intense fatigue, vomiting, diarrhea, headaches and others. I
7 even take additional medicines to alleviate some of the side effects that the main
8 medicines cause. The trick is that all these medicines must be taken on time at
9 specific times throughout the day; some must be taken with food and some
10 without food. Consequently, I am forced to coordinate my meals, my sleep, and
11 even my bathroom use according to the medicines I take. All this leaves little
12 room for changes in my daily routine.

13 This is why the 30 minutes makes a big difference for me in the mornings,
14 especially right now when I am still adjusting to my new medicine. Hopefully,
15 things will change in the future; but in any case, what I have seen so far is that my
16 presence seems to be most needed here between the hours of 8:30 and 5:30. We
17 never seem to have many calls at the beginning of the day, yet, I often stay late
18 because I am stuck on a call or because Mara is running late. This would allow
19 coverage for when she is late or answering a call.

20 As I had suggested, I can work Monday and Wednesdays from 8 to 5 or any other
21 day that I might have to leave early for a doctor's appointment; and the rest of the
22 days from 8:30 to 5:30. I don't really feel that this puts a big burden on the flow
23 of work of the company and it does not keep from [sic] performing my job at my
24 best, on the opposite, it makes me feel better at work.

25 I feel really badly having to bother you with these issues because both of you
26 have been super nice in helping me with this situation; and I can appreciate how
27 difficult it is to put together the business.

28 In order to minimize the impact of the small accommodation I requested, I try to
compensate by giving you my 150%. I try to work super fast when doing
translations and try to be as cordial and helpful as possible to our clients on the
phone. I have been working on building a good rapport with the nurses and the
people in the Financial Department who give us most of our work. I try to make
them feel at ease so they enjoy their work with me and remain on the phone for
long periods of time so that the company can improve the chances of earning
more. As a matter of fact, I recently had 2 phone calls that lasted about 1 and ½
hours on the same day. I have also continued to receive commendations from all
departments, including one today from inspector Lum from the Police Department
who told me that I did my job so well that he will be requesting me specifically
every time he calls. I also try to be loyal and truthful: whenever I have some
information that may affect you in some way I always let you know.

Thank you very much in anticipation for your understanding and support in this
matter.

Although Monger had problems with Martinez prior to May 23, and Martinez had been anything
but "super nice" to him in dealing with him generally and with respect to his disability
specifically, Monger felt he needed to bend over backwards in his approach to, and flatter,
Martinez to have any chance at all of receiving any accommodation for his disability, let alone

1 the specific accommodations he had requested.

2 40. The next day, Monger approached Martinez to follow up on his e-mail. Monger
3 asked Martinez to permit him to begin work at 8:30 a.m., as he and Rouchdy had originally
4 agreed. First, Monger offered to take calls from home prior to that hour, using IEC's call-routing
5 system.. Second, Monger offered to stay at IEC's offices later in the afternoon, to make up for
6 any time missed in the morning.

7 41. Martinez refused Monger's reasonable request, requiring him to be in the office
8 by 8:00 a.m. Moreover, despite his continued explanation of his need to see his doctors on a
9 regular basis, Martinez continued to object to Monger taking time off to see his doctors.

10 42. At first, feeling that Martinez would punish him if he pressed the issue, Monger
11 attempted to comply. But after a few weeks of suffering intense distress at work, he decided to
12 raise the issue with Rouchdy in private. During his first months at IEC, Monger had felt he
13 could talk to Rouchdy whenever Martinez was being unreasonable, and believed Rouchdy would
14 treat him fairly. But, even after Monger pled his case to Rouchdy and explained why his
15 requested reasonable accommodations were essential to his ability to work and remain healthy,
16 Rouchdy refused to intervene. Even worse, he informed Monger that, from then on, Rouchdy no
17 longer would handle any administrative matters and Monger needed to deal directly with
18 Martinez with respect to any employment issues. From that point forward, Martinez would have
19 the final word with respect to Monger's employment at IEC.

20 **Martinez's Campaign of Disability-Based Harassment**

21 43. Martinez's mistreatment of Monger was not limited to her refusals to permit him
22 to arrive at work at 8:30 a.m. and her attempts to prevent him from attending his medical
23 appointments. Beginning in spring 2006, Martinez engaged in a campaign of disability-based
24 harassment against Monger.

25 44. At least two or three times a week, Martinez, or another IEC employee instructed
26 by Martinez, would knock on the bathroom door while Monger was using the bathroom, and
27 loudly demand he come out and answer a telephone call. This had the effect of calling the entire
28 office's attention to Monger's health problems and bathroom usage on a repeated, regular basis.

1 Martinez's actions deeply embarrassed Monger and caused him profound stress, which in turn
2 aggravated his gastrointestinal issues, causing him increased pain and discomfort.

3 45. On at least one other occasion, Rouchdy remarked, in a joking tone and in front of
4 Monger and several other IEC employees, that Monger's frequent bathroom usage meant that
5 IEC was "going to have to install a telephone in the bathroom for Marlon." This disrespectful
6 and degrading comment showed IEC's complete disregard for Monger's health problems and
7 unwillingness to reasonably accommodate those problems.

8 46. As noted above, from the beginning of Monger's employment at IEC, Martinez
9 prevented IEC employees, including Monger, from taking legally-mandated breaks during the
10 work day. With respect to Monger specifically, Martinez told Monger that he was not permitted
11 to leave his desk to take any breaks during the work day, except to use the bathroom. She further
12 informed Monger that, before he used the bathroom, he needed specifically to inform her he was
13 planning to do so. Complying with this instruction not only was humiliating to Monger, it had
14 the effect of discouraging him from using the bathroom to relieve the severe effects of his illness
15 and informing him that IEC would not accommodate his disability.

16 47. In or about May 2006, Martinez also told Monger that he was not permitted to use
17 his mobile phone for any purpose during work hours. Monger had never been reprimanded by
18 Martinez or anyone else at IEC for using his mobile phone during work hours, and used that
19 phone only to schedule medical appointments. Martinez's capricious refusal to permit him to
20 use his mobile phone for any purpose unreasonably interfered with Monger's ability to
21 communicate with his doctors and thus receive appropriate treatment for his chronic illness.

22 **Loss of the Contra Costa County Contract**

23 48. Unfortunately, Rouchdy managed the Contra Costa County contract poorly, and
24 in July 2006, IEC lost that contract. After losing the contract, Rouchdy fired all his interpreters
25 except Monger and Darling, including the Costa Rican interpreters Monger had hired. The loss
26 of the Contra Costa County contract reduced the amount of interpretation work at IEC. Monger
27 began worrying that, if IEC's business continued to decrease, he would lose his job. He spoke
28 about that possibility with Darling, who shared his concerns.

1 49. At some point in July 2006, Rouchdy saw an advertisement for another interpreter
2 job in Darling's trash can. He confronted Monger about this and asked if Monger was steering
3 Darling toward leaving IEC. Monger told Rouchdy that neither he nor Darling wanted to leave
4 IEC, but that both of them were concerned about the downturn in IEC's business and wondered
5 if they were in danger of losing their jobs. After hearing Monger's response, Rouchdy calmed
6 down and told Monger he had no reason to worry about losing his job because he was "great" at
7 it. Shortly thereafter, because IEC had little interpretation work after losing the Contra Costa
8 County contract, Rouchdy transitioned Monger from interpretation to translation, which had
9 traditionally made up the bulk of IEC's business. This change in work responsibilities forced
10 Monger to interact even more with Martinez.

11 50. Despite Monger's difficulties with Martinez, and IEC's business issues, Monger
12 continued to do excellent work. In August 2006, Rouchdy sent Monger to Oakland Children's
13 Hospital for on-site translation work. Monger performed his work well, and at the end of his
14 first interpretation assignment the Children's Hospital supervisor in charge of interpretation
15 commended him enthusiastically. Further, Children's Hospital officials called IEC to commend
16 Monger's work. The hospital subsequently requested Monger's services so often that he ended
17 up spending 4 to 5 days there each week during August 2006.

18 51. Rouchdy recognized Monger's continuing excellent work for IEC. In an August
19 2, 2006 e-mail, Rouchdy wrote Monger, "I am sorry about your illness and disability, and I
20 respect your privacy. We are impressed at your handling it so well, for it must be difficult to
21 juggle your work and medical appointments. You have always tried to make sure that your work
22 is uninterrupted, and we appreciate it."

23 **"I Don't Care About Your Disability!"**

24 52. On or about August 6, 2006, Martinez confronted Monger in a public area at IEC
25 and loudly demanded he tell her what medical appointments he had scheduled during her then-
26 upcoming vacation. Monger had already sent Martinez a list with all his scheduled
27 appointments, and told Martinez that. In an effort to head off any scheduling issues, Monger
28 also reminded Martinez that, at the end of August, he was scheduled to have surgery on his right

1 elbow, and would be absent from work for two weeks after that procedure. Martinez responded
2 angrily, telling Monger that, from that point on, he would not be able to leave work for any
3 medical appointments, and would have to see his doctors during lunch or after work. Shocked,
4 because Martinez's response had nothing to do with Monger's statement about his elbow
5 surgery, Monger asked if he could discuss the issue with Martinez privately. Monger did not
6 want to discuss these personal issues with Martinez in the middle of the IEC office.

7 53. At that point, Martinez screamed at Monger, loud enough for the entire office to
8 hear, **"I don't care about your disability!"** She further told Monger that she didn't care about
9 his health. Martinez screamed so loudly that Rouchdy, who normally refused to get involved in
10 conflicts between Martinez and other employees, rushed out of his office and took Martinez into
11 his office to speak to her privately.

12 54. Although Martinez and Rouchdy had called attention to, joked about, and mocked
13 Monger's bathroom usage, Monger had not expressly disclosed the specifics of his condition to
14 anyone at IEC, other than Rouchdy. As noted above, he knew that Martinez knew he had health
15 problems that required certain reasonable accommodations to his work schedule, but no more
16 than that. Monger was humiliated by Martinez's abuse and her disclosure of his disability to the
17 entire office, both without his consent and in a demeaning, dismissive fashion. He was also
18 stunned by Martinez's direct, unambiguous statement that she, his supervisor and IEC's Vice
19 President, did not care about or feel any need to accommodate his disability.

20 55. Several minutes later, Martinez left Rouchdy's office. Now calm, she came into
21 Monger's office, shut the door, and repeated her statement that he could not schedule any more
22 doctors' appointments during work hours. Monger replied that such limitations were illegal and
23 that, if necessary, he would ask his lawyer to contact her and explain his legal rights.

24 **Monger's Elbow Surgery and Human Rights Complaint**

25 56. On August 28, 2006, shortly before his elbow surgery, Monger wrote an e-mail to
26 Martinez and Rouchdy regarding that surgery and his planned recovery:

27 I wanted to remind you that I am having my surgery this coming Friday,
28 September 1st, 2006. Although, the doctor says that I need to rest 2 to 3 weeks, I
am hoping that it will be only one week. He says that the recuperation time is

1 different for everybody and he will be happy to work with me in helping me get
2 back to work a.s.a.p.

3 57. That same day, Martinez replied:

4 We wish you a successful surgery and speedy recovery. Please have your doctor
5 provide us with a signed letter stating that you are fully recovered and capable of
6 performing your normal duties, including working on a computer.

7 58. When Monger asked Martinez to clarify the meaning of her request, she told him
8 he could return to work only when he recovered the full use of his right arm. This made no
9 sense, as few of Monger's job duties required the full use of both arms. In July and August
10 2006, the two months preceding his surgery, Monger performed a variety of verbal and written
11 translation work for IEC. During that same time period, he performed interpretations both on-
12 site and in the IEC office. Verbal translation, which work was readily available at IEC in 2006,
13 would not have required Monger to use his right arm. Similarly, on-site interpretation work was
14 available at IEC in 2006, and that work would not have required Monger to use his right arm.
15 Monger believed, and continues to believe, that Martinez was imposing an arbitrary restriction
16 on his employment in order to drive him away from IEC.

17 59. On September 1, 2006, Monger had successful surgery on his elbow. He took the
18 next two weeks off to recover, as his doctor had advised. By September 14, 2006, he was ready
19 to return to work, and asked his surgeon to write a letter detailing the limits on physical activity
20 he should abide by during his recovery. That same day, Monger's doctor sent that letter to IEC,
21 which letter stated, "Patient Marlon Monger may do verbal interpretation but can not do any
22 work with right hand."

23 60. On or about September 15, 2006, Monger informed Martinez that he was ready to
24 return to work. Also on September 15, because he was ready to return to work but feared IEC
25 would refuse to allow him to do so pursuant to Martinez's earlier letter, Monger caused the San
26 Francisco Human Rights Commission ("SFHRC") to send a letter to IEC on his behalf. The
27 SFHRC letter stated that Monger was ready to return to work subject to temporary, reasonable
28 accommodations for his elbow. It further detailed the slight accommodations Monger would
need to continue work while recovering from surgery, and concluded by asking IEC to permit

1 Monger to return to work with such accommodations. IEC received the letter, but never offered
2 any response to Monger's request.

3 **IEC's Campaign of Retaliation Against Monger for His Complaint**

4 61. IEC employees' work schedules are not fixed from week to week. Instead, IEC
5 draws up a new and separate schedule each week, and a given employee's working hours and
6 responsibilities are liable to vary from week to week, depending on the work IEC has to offer
7 during that week. Accordingly, an employee who during a given week is given a particular work
8 assignment, or scheduled for more hours, cannot necessarily count on having that type or amount
9 of work in subsequent weeks. Similarly, an employee who during a given week is denied
10 assignments, or whose hours are cut, may be given additional or more desirable assignments, or
11 an increase in hours, in future weeks.

12 62. Although Monger resumed work for IEC later in September 2006, during his first
13 week back on the job, IEC drastically cut his work hours, scheduling him for approximately five
14 hours. (Between his start date in February 2006 and the end of August 2006, Monger typically
15 had worked 35-40 hours per week for IEC.)

16 63. Around the same time, IEC also began telling clients for whom Monger had done
17 satisfactory or outstanding work in the past that Monger was unavailable. In late September or
18 early October 2006, Monger received a call early one morning from Joanna Pacheko, then a
19 receptionist at IEC. Pacheko told Monger he was needed at Oakland Children's Hospital, where,
20 as discussed above, he had previously worked for IEC, and so successfully that his contact at the
21 hospital had repeatedly requested his services. Monger began preparing for the assignment. But
22 before he left, Pacheko called back and told Monger that the hospital had told IEC it did not want
23 Monger to do the job. Because of his history at the hospital, Monger was surprised and
24 discouraged. He called his contact at Oakland Children's Hospital and asked whether he had
25 done something wrong. His contact told him a very different story: that the hospital had asked
26 for Monger specifically, but that IEC had told the hospital that Monger was not available. In
27 other words, IEC had lied to Monger. IEC knew what was involved in interpretation work and
28 understood Monger was capable of performing on-site interpretation work despite his then-recent

1 surgery. Even if IEC had not known that fact, the letters from Monger's doctor and the SFHRC
2 had informed IEC of that fact.

3 64. During fall 2006, IEC continued to schedule Monger for approximately five hours
4 worth of work. Monger regularly told IEC he was willing and able, and preferred, to work more
5 hours than he was given. IEC never increased his hours. Neither did IEC ever inform Monger
6 that this reduction in his work hours was permanent. Instead, they consistently told Monger that
7 they would contact him if more work became available, giving him the impression that he might
8 receive more hours in the future if work conditions at IEC changed.

9 65. Monger depended financially on full-time work at IEC. When IEC took that work
10 from him, he suffered significant financial hardship.

11 66. On January 23, 2007, IEC sent Monger a letter, notifying him they were formally
12 terminating his employment effective February 2, 2007. In the January 23 letter, IEC cited a
13 lack of available on-site interpretation work as the basis for Monger's termination. Specifically,
14 the company asserted that "the low volume of telephone interpreting can no longer sustain an in-
15 house employee." IEC's basis for terminating Monger was pretextual. Although Monger was
16 unaware of this until March 2008, at the time he was terminated, IEC had regained the contract
17 to provide interpretation services to Contra Costa County hospitals in December 2006. The
18 Contra Costa County Board of Supervisors approved the renewed contract on February 6, 2007.
19 After regaining that contract, IEC had ample interpretation work they could have offered to
20 Monger. Alternatively, IEC had always had, and continued to have, ample translation work that
21 Monger also could have performed, as he often had during his time at IEC. Despite his
22 consistently excellent performance, which both IEC and its clients had repeatedly recognized, the
23 company fired him instead.

24 67. As it had indicated it would in its January 23, 2007 letter, IEC finally terminated
25 Monger's employment on February 2, 2007.

26 **Monger's Exhaustion of His Administrative Remedies**

27 68. On October 29, 2007, Monger filed a complaint with the California Department of
28 Fair Housing and Employment ("DFEH"). That complaint, which Monger attaches to this

1 Complaint as Exhibit A and incorporates herein by reference, presented the following claims of
2 disability discrimination to DFEH:

- 3 • Denial of various reasonable accommodations to his conditions of
4 employment, including his request to begin work at 8:30 a.m. and be
5 permitted time off for periodic medical appointments.
- 6 • Reduction in work hours between his elbow surgery in September 2006
7 and January 2007, including, specifically, the termination of Monger's
8 work at Oakland Children's Hospital.
- 9 • Retaliation for his assertion of his rights under California law.
- 10 • Termination of his employment in February 2007.

11 Monger specifically plead in his DFEH complaint that IEC committed these acts wholly or partly
12 because he had AIDS, which constitutes a qualifying disability per se under California law, and
13 constitutes a qualifying disability under federal law in the circumstances of this case.

14 69. On October 31, 2007, DFEH closed its file on Monger's complaint, referring that
15 complaint to the federal Equal Employment Opportunity Commission ("EEOC") and issuing a
16 right-to-sue letter to Monger, which letter is attached to this Complaint as Exhibit B and which
17 Monger incorporates herein by reference.

18 70. Beginning on August 7, 2008, having heard nothing from the EEOC to that date,
19 Monger, through his counsel, began requesting a right-to-sue letter from EEOC. On August 20,
20 2008, EEOC closed its file on Monger's complaint and issued Monger a right-to-sue letter,
21 which Monger's counsel received on August 21, 2008. That letter is attached to this Complaint
22 as Exhibit C, and Monger incorporates it herein by reference.

23 **IEC's Violations of Federal and California Wage Laws**

24 71. In addition, through Monger's employment at IEC, IEC willfully established and
25 followed illegal wage practices, including non-payment of overtime wages, delayed payment of
26 wages, and denial of breaks mandated by law.

27 72. Throughout Monger's employment, IEC failed to account for and pay Monger's
28 full overtime wages. IEC repeatedly paid Monger only his regular hourly wage for overtime
hours, rather than the increased wages required under both federal and California law.

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73. As discussed in some detail above, IEC also consistently denied Monger rest and meal breaks required under the California Labor Code. As described above, Martinez routinely berated and cursed IEC's employees, including Monger, for taking any breaks at all during the work day.

74. IEC also failed to provide Monger with complete and accurate wage statements identifying his correct hours and compensation for regular and overtime hours, and all other information required by law.

75. On several occasions, IEC also failed to pay Monger's wages timely. Throughout fall 2006, Monger repeatedly reminded Martinez that he had not been paid for certain hours and requested payment of those back wages. Nevertheless, IEC failed to pay certain wages for Monger's work in fall 2006 until many weeks after Monger's termination in February 2007. IEC still has not paid Monger's full overtime compensation for his work at IEC, or the premiums required under California law for the breaks IEC illegally denied Monger.

FIRST CLAIM FOR RELIEF

Disability Discrimination under the Americans with Disabilities Act (Against IEC)

76. Monger incorporates the preceding paragraphs by reference as though fully set forth here.

77. As discussed above, Monger worked for IEC from January 19, 2006 to February 2, 2007 ("the Employment Period"). At all times during the Employment Period, IEC was an employer subject to the Americans with Disabilities Act ("ADA"), and Monger was an employee of IEC.

78. As described in greater detail above, throughout the Employment Period, Monger had AIDS, which substantially limited him in his ability to perform multiple major life activities.

79. Both Rouchdy, IEC's owner and chief executive, and Martinez, its Vice President and second-in-command, knew that Monger was disabled. Rouchdy learned that Monger was disabled during his initial interview with Monger in mid-January 2006, and learned the specific nature of Monger's AIDS disability about a month later. Martinez learned that Monger was disabled shortly after he began work at IEC, and no later than March 2006, when Monger first

1 advised her of his need for reasonable accommodations to his schedule, both to recover from his
2 morning dose of medication and for doctor's appointments. Further, both Rouchdy and Martinez
3 treated Monger as a disabled person, for all the reasons described in this Complaint.

4 80. Monger was able to perform all essential duties of his job at IEC with reasonable
5 accommodations to his work schedule.

6 81. IEC consistently mistreated Monger because of his disability and his attempts to
7 enforce his rights under federal and state law. Most obviously, when Monger returned to work
8 after his elbow surgery in September 2006, IEC repeatedly scheduled Monger for only minimal
9 hours, instead of his previous full-time schedule, although work was available.

10 82. As discussed above, IEC employees' work schedules are not fixed from week to
11 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
12 working hours and responsibilities are liable to vary from week to week, depending on the work
13 IEC has to offer during that week. Accordingly, an employee who during a given week is given
14 a particular work assignment, or scheduled for a certain number of hours, may receive a different
15 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
16 is denied assignments, or whose hours are reduced, may be given additional or more desirable
17 assignments, or an increase in hours, in future weeks.

18 83. Accordingly, each weekly work schedule created and distributed by IEC from the
19 date on which Monger was able to return to work—September 15, 2006—through the date IEC
20 terminated him—February 2, 2007—was an independent instance of disability discrimination
21 against Monger.

22 84. IEC terminated Monger's employment on February 2, 2007.

23 85. Monger's disability and/or IEC's belief that he was disabled was a motivating
24 reason for IEC's adverse employment actions of cutting Monger's hours and terminating
25 Monger.

26 86. IEC's stated reasons for refusing to give Monger substantial hours and eventually
27 for terminating him were false and pretextual.

28 ///

1 87. Monger discovered that IEC's stated reason for limiting his work hours and then
 2 terminating him—the absence of interpretation work—was false only in March 2008, when he
 3 learned that IEC had regained the Contra Costa County hospital contract and the associated
 4 interpretation work. In any event, IEC easily could have transitioned him to written translation
 5 work, which Monger was qualified to perform and had been performing during his time at IEC.
 6 IEC had sufficient available translation work to retain Monger as an employee.

7 88. As a direct and proximate result of IEC's discriminatory conduct, Monger has
 8 suffered harm including, but not limited to, loss of income and emotional distress.

9 89. IEC's unlawful conduct was committed by Rouchdy and Martinez, officers and
 10 managerial employees acting within the scope of their employment.

11 90. IEC, Rouchdy, and Martinez intentionally violated the ADA, acting with malice
 12 and/or a reckless disregard for Monger's rights.

13 **SECOND CLAIM FOR RELIEF**

14 **Disability Discrimination under the California Fair Employment and Housing Act**

15 **(Against IEC)**

16 91. Monger incorporates the preceding paragraphs by reference as though fully set
 17 forth here.

18 92. As discussed above, at all times during Monger's Employment Period with IEC,
 19 IEC was an employer subject to the California Fair Employment and Housing Act ("FEHA"),
 20 and Monger was an employee of IEC.

21 93. As described in greater detail above, throughout the Employment Period, Monger
 22 had AIDS, which is expressly recognized under FEHA as a qualifying disability per se.

23 94. As described in greater detail above, both Rouchdy and Martinez knew Monger
 24 was disabled and treated Monger as a disabled person during the Employment Period.

25 95. Monger was able to perform all essential duties of his job at IEC with reasonable
 26 accommodations to his work schedule.

27 96. IEC consistently mistreated Monger because of his disability and his attempts to
 28 enforce his rights under federal and state law. Most obviously, when Monger returned to work

1 after his elbow surgery in September 2006, IEC repeatedly scheduled Monger for only minimal
2 hours, instead of his previous full-time schedule, although work was available.

3 97. As discussed above, IEC employees' work schedules are not fixed from week to
4 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
5 working hours and responsibilities are liable to vary from week to week, depending on the work
6 IEC has to offer during that week. Accordingly, an employee who during a given week is given
7 a particular work assignment, or scheduled for a certain number of hours, may receive a different
8 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
9 is denied assignments, or whose hours are cut, may be given additional or more desirable
10 assignments, or an increase in hours, in future weeks.

11 98. Accordingly, each weekly work schedule created and distributed by IEC from the
12 date on which Monger was able to return to work—September 15, 2006—through the date IEC
13 terminated him—February 2, 2007—was a separate and independent instance of disability
14 discrimination against Monger.

15 99. Moreover, IEC's pattern of denying Monger regular, full-time work constituted a
16 continuing violation of his rights under FEHA to be free from disability discrimination. IEC's
17 wrongful denials of hours to Monger from September 2006 to February 2007 were all
18 interrelated acts that together made up an ongoing course of unlawful conduct towards Monger.
19 The wrongful denials of hours occurred regularly, each time IEC published its weekly work
20 schedule and unfairly limited Monger to an unreasonably small number of hours. And because
21 IEC never told Monger it was permanently cutting his hours, and IEC created a new schedule
22 each week, a reasonable person would not have believed that any of the individual schedules
23 constituted a final decision regarding his or her work schedule.

24 100. IEC terminated Monger's employment on February 2, 2007.

25 101. Monger's disability and/or IEC's belief that he was disabled was a motivating
26 reason for IEC's adverse employment actions of cutting Monger's hours and terminating
27 Monger.

28 ///

102. IEC's stated reasons for reducing Monger's work hours and for terminating him were false and pretextual.

103. Monger discovered that IEC's stated reason for limiting his work hours and then terminating him—the absence of interpretation work—was false only in March 2008, when he learned that IEC had regained the Contra Costa County hospital contract and the associated interpretation work. In any event, IEC easily could have transitioned him to written translation work, which Monger was qualified to perform and had been performing during his time at IEC. IEC had sufficient available translation work to retain Monger as an employee.

104. As a direct and proximate result of IEC's discriminatory conduct, Monger has suffered harm including, but not limited to, loss of income and emotional distress.

105. IEC's unlawful conduct was committed by Rouchdy and Martinez, who are both IEC officers and managing agents. Rouchdy endorsed, approved, and/or ratified Martinez's unlawful conduct toward Monger.

106. IEC's conduct was despicable and in willful and conscious disregard of Monger's rights, and IEC acted toward Monger with malice, oppression, and fraud.

THIRD CLAIM FOR RELIEF

Retaliation under the ADA (Against IEC)

107. Monger incorporates the preceding paragraphs by reference as though fully set forth here.

108. As discussed above, at all times during Monger's Employment Period with IEC, IEC was an employer subject to ADA, and Monger was an employee of IEC.

109. As described in greater detail above, throughout the Employment Period, Monger had AIDS, which substantially limited him in his ability to perform multiple major life activities.

110. As described in greater detail above, both Rouchdy and Martinez knew Monger was disabled and treated Monger as a disabled person during the Employment Period.

111. Monger was able to perform all essential duties of his job at IEC with reasonable accommodations to his work schedule.

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1 112. Monger exercised his rights under the ADA by requesting reasonable
2 accommodations for his medical condition from IEC, by informing IEC that he believed the
3 company was not respecting his legal rights (including but not limited to his efforts to seek help
4 from the SFHRC), and by taking other actions as described above.

5 113. IEC consistently mistreated Monger because of his disability and his attempts to
6 enforce his rights under federal and state law. Most obviously, when Monger returned to work
7 after his elbow surgery in September 2006, IEC repeatedly scheduled Monger for only minimal
8 hours, instead of his previous full-time schedule, although work was available.

9 114. As discussed above, IEC employees' work schedules are not fixed from week to
10 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
11 working hours and responsibilities are liable to vary from week to week, depending on the work
12 IEC has to offer during that week. Accordingly, an employee who during a given week is given
13 a particular work assignment, or scheduled for a certain number of hours, may receive a different
14 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
15 is denied assignments, or whose hours are cut, may be given additional or more desirable
16 assignments, or an increase in hours, in future weeks.

17 115. Accordingly, each weekly work schedule created and distributed by IEC from the
18 date on which Monger was able to return to work—September 15, 2006—through the date IEC
19 terminated him—February 2, 2007—was an independent instance of retaliation against Monger.

20 116. Monger's attempts to exercise his rights under the ADA were a motivating reason
21 for IEC's adverse scheduling decisions and termination of Monger.

22 117. Defendants' stated reasons for refusing to give Monger substantial hours and for
23 terminating him were false and pretextual.

24 118. Monger discovered that IEC's stated reason for limiting his work hours and then
25 terminating him—the absence of interpretation work—was false only in March 2008, when he
26 learned that IEC had regained the Contra Costa County hospital contract and the associated
27 interpretation work. In any event, IEC easily could have transitioned him to written translation
28 work, which Monger was qualified to perform and had been performing during his time at IEC.

1 IEC had sufficient available translation work to retain Monger as an employee.

2 119. As a direct and proximate result of defendants' adverse scheduling decisions and
3 termination, Monger has suffered harm including, but not limited to, loss of income and
4 emotional distress.

5 120. IEC's unlawful conduct was committed by Rouchdy and Martinez, officers and
6 managerial employees acting within the scope of their employment.

7 121. IEC, Rouchdy, and Martinez intentionally violated the ADA, acting with malice
8 and/or a reckless disregard for Monger's rights.

9 **FOURTH CLAIM FOR RELIEF**

10 **Retaliation under FEHA (Against IEC)**

11 122. Monger incorporates the preceding paragraphs by reference as though fully set
12 forth here.

13 123. As discussed above, at all times during Monger's Employment Period with IEC,
14 IEC was an employer subject to the California Fair Employment and Housing Act ("FEHA"),
15 and Monger was an employee of IEC.

16 124. As described in greater detail above, throughout the Employment Period, Monger
17 had AIDS, which is expressly recognized under FEHA as a qualifying disability per se.

18 125. As described in greater detail above, both Rouchdy and Martinez knew Monger
19 was disabled and treated Monger as a disabled person during the Employment Period.

20 126. Monger was able to perform all essential duties of his job at IEC with reasonable
21 accommodations to his work schedule.

22 127. Monger exercised his rights under FEHA by requesting reasonable
23 accommodations for his medical condition from IEC, by informing IEC that he believed the
24 company was not respecting his legal rights (including but not limited to his efforts to seek help
25 from the SFHRC), and by taking other actions as described above.

26 128. IEC consistently mistreated Monger because of his disability and his attempts to
27 enforce his rights under federal and state law.

28 129. As discussed above, IEC employees' work schedules are not fixed from week to

1 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
2 working hours and responsibilities are liable to vary from week to week, depending on the work
3 IEC has to offer during that week. Accordingly, an employee who during a given week is given
4 a particular work assignment, or scheduled for a certain number of hours, may receive a different
5 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
6 is denied assignments, or whose hours are cut, may be given additional or more desirable
7 assignments, or an increase in hours, in future weeks.

8 130. Accordingly, each weekly work schedule created and distributed by IEC from the
9 date on which Monger was able to return to work—September 15, 2006—through the date IEC
10 terminated him—February 2, 2007—was a separate and independent instance of retaliation
11 against Monger.

12 131. Moreover, IEC's months-long pattern and practice of retaliation against Monger
13 constituted a continuing violation of his rights under FEHA. At first, when Monger requested a
14 reasonable accommodation to his work schedule from Rouchdy during his initial interview,
15 Rouchdy agreed to accommodate Monger by permitting him to arrive at work at 8:30 a.m. and to
16 take time off for medical appointments. Then, in March 2006, Martinez rescinded the reasonable
17 accommodation to Monger's schedule and insisted he begin work at 8:00 a.m. Martinez also
18 forbade Monger from taking time off to see his doctors, although Rouchdy later overruled
19 Martinez on that point. IEC began retaliating against Monger in May 2006, when Monger
20 formally requested, as the law provides, that the original reasonable accommodation Rouchdy
21 had granted him in January 2006 be reinstated. The retaliation continued through Monger's
22 ongoing dialogue with Martinez regarding his work hours and doctor's appointments, and
23 Martinez's harassment of him for his bathroom usage and denial of breaks. In August 2006,
24 Martinez again decreed that Monger could no longer take any time off for medical appointments,
25 at which point Monger again asserted his legal rights. Martinez then barred him from returning
26 to work after his surgery. In response to that, in September 2006, Monger yet again asserted his
27 legal rights, this time through SFHRC. His persistent willingness to negotiate these issues with
28 an unreasonable supervisor was met with yet more retaliation, as Martinez began crafting each

1 weekly IEC work schedule to deny Monger hours, even though work was available, before
2 eventually terminating him in February 2007.

3 132. IEC's retaliatory actions against Monger from May 2006 through February 2007
4 were all interrelated and similar in nature; they each followed Monger's assertion of his legal
5 rights, and involved Monger's work schedule and right to take time off for medical
6 appointments. The retaliatory acts occurred regularly and frequently, and together formed an
7 ongoing course of retaliatory conduct towards Monger. Further, because IEC had frequently
8 changed its position on Monger's work hours and right to see his doctors during work hours,
9 either in response to Monger's assertion of his rights, Rouchdy's intervention with Martinez, or
10 Martinez changing her own mind, a reasonable person in Monger's position would not have
11 believed that any of IEC's adverse actions were final. Indeed, Monger continued to negotiate
12 each issue with IEC until IEC terminated him, recognizing that IEC could still alter its illegal
13 practices, as it had altered its position before.

14 133. Monger's attempts to exercise his rights under FEHA were a motivating reason
15 for IEC's adverse employment actions against Monger.

16 134. IEC's stated reasons for refusing to reasonably accommodate Monger, for failing
17 to give Monger substantial hours, and for terminating Monger were false and pretextual. With
18 respect to the refusal to reasonably accommodate Monger's scheduling needs and medical
19 appointments, as noted above, IEC had no legitimate business need for Monger to be in the
20 office before 8:30 a.m., and Monger repeatedly expressed his willingness to make up missed
21 time at other times of the day when IEC had more of a need for his services.

22 135. Monger discovered that IEC's stated reason for limiting his work hours and then
23 terminating him—the absence of interpretation work—was false only in March 2008, when he
24 learned that IEC had regained the Contra Costa County hospital contract and the associated
25 interpretation work. In any event, IEC easily could have transitioned him to written translation
26 work, which Monger was qualified to perform and had been performing during his time at IEC.
27 IEC had sufficient available translation work to retain Monger as an employee.

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1 work schedules and/or the right to work from home.

2 145. IEC never responded to the SFHRC letter, refusing to answer Monger's request
3 for a reasonable accommodation during the remainder of his time at IEC. Instead, IEC began
4 crafting its work schedule each week to deprive Monger of substantial work hours and deny
5 Monger the reasonable accommodations he had requested. By doing so, IEC repeatedly refused
6 Monger's requests.

7 146. As discussed above, IEC employees' work schedules are not fixed from week to
8 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
9 working hours and responsibilities are liable to vary from week to week, depending on the work
10 IEC has to offer during that week. Accordingly, an employee who during a given week is given
11 a particular work assignment, or scheduled for a certain number of hours, may receive a different
12 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
13 is denied assignments, or whose hours are cut, may be given additional or more desirable
14 assignments, or an increase in hours, in future weeks.

15 147. Accordingly, each weekly work schedule created and distributed by IEC from the
16 date on which Monger was able to return to work—September 15, 2006—through the date IEC
17 terminated him—February 2, 2007—was a separate and independent instance of IEC's denial of
18 a reasonable accommodation requested by Monger.

19 148. As a direct and proximate result of IEC's failure to provide reasonable
20 accommodations, Monger has suffered harm including, but not limited to, loss of income and
21 emotional distress.

22 149. IEC's unlawful conduct was committed by Rouchdy and Martinez, officers and
23 managerial employees acting within the scope of their employment.

24 150. IEC, Rouchdy, and Martinez intentionally violated the ADA, acting with malice
25 and/or a reckless disregard for Monger's rights.

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SIXTH CLAIM FOR RELIEF

Failure to Provide Reasonable Accommodation under FEHA (Against IEC)

151. Monger incorporates the preceding paragraphs by reference as though fully set forth here.

152. As discussed above, at all times during Monger's Employment Period with IEC, IEC was an employer subject to the California Fair Employment and Housing Act ("FEHA"), and Monger was an employee of IEC.

153. As described in greater detail above, throughout the Employment Period, Monger had AIDS, which is expressly recognized under FEHA as a qualifying disability per se.

154. As described in greater detail above, both Rouchdy and Martinez knew Monger was disabled and treated Monger as a disabled person during the Employment Period.

155. Monger was able to perform all essential duties of his job at IEC with reasonable accommodations to his work schedule.

156. When Monger returned from his elbow surgery in September 2006, Monger asked that IEC permit him to return to work with certain specified reasonable accommodations. Monger caused the SFHRC to submit a formal letter to IEC asserting his legal rights and setting forth specific requested reasonable accommodations. Monger informed IEC that the accommodations he requested were necessary because of his disability. Similarly, the schedule adjustments Monger requested were reasonable and would not affect his ability to fulfill the essential duties of his position or interfere with IEC's business. IEC allowed other, non-disabled employees many of the reasonable accommodations Monger had requested, including flexible work schedules and/or the right to work from home.

157. IEC never responded to the SFHRC letter, refusing to answer Monger's request for a reasonable accommodation during the remainder of his time at IEC. Instead, IEC began crafting its work schedule each week to deprive Monger of substantial work hours and deny Monger the reasonable accommodations he had requested. By doing so, IEC repeatedly refused Monger's requests.

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1 158. As discussed above, IEC employees' work schedules are not fixed from week to
2 week. Instead, IEC draws up a new and separate schedule each week, and a given employee's
3 working hours and responsibilities are liable to vary from week to week, depending on the work
4 IEC has to offer during that week. Accordingly, an employee who during a given week is given
5 a particular work assignment, or scheduled for a certain number of hours, may receive a different
6 type or amount of work in subsequent weeks. Similarly, an employee who during a given week
7 is denied assignments, or whose hours are cut, may be given additional or more desirable
8 assignments, or an increase in hours, in future weeks.

9 159. Accordingly, each weekly work schedule created and distributed by IEC from the
10 date on which Monger was able to return to work—September 15, 2006—through the date IEC
11 terminated him—February 2, 2007—was a separate and independent instance of IEC's refusal to
12 allow Monger to return to work with his requested reasonable accommodations.

13 160. Moreover, IEC's pattern of denying Monger the reasonable accommodations he
14 had requested constituted a continuing violation of his rights under FEHA. Monger first
15 informed IEC that he required reasonable accommodations in January 2006, at his initial
16 interview with Rouchdy. Rouchdy agreed that IEC would reasonably accommodate Monger by
17 permitting him to begin work at 8:30 a.m. rather than 8:00 a.m. IEC began refusing Monger's
18 requested reasonable accommodations in March 2006, when Martinez rescinded Rouchdy's
19 reasonable accommodation and insisted that Monger begin coming to work at 8:00 a.m.
20 Martinez also forbade Monger from leaving work to see his doctors, although Rouchdy later
21 overruled Martinez on that point. In May 2006, when Monger formally requested that IEC obey
22 the law and reinstate the original reasonable accommodation Rouchdy had granted him in
23 January 2006, Martinez refused, requiring Monger to be at work at 8:00 a.m. on days when he
24 needed to take time off for medical appointments. Because Monger averaged four doctor's
25 appointments per week, Martinez's ruling forced him to arrive at work each day at 8:00 a.m., and
26 further had the effect of discouraging Monger from seeing his doctors. As a result, Monger
27 began missing important doctor's appointments to avoid causing problems at work. In June
28 2006, Rouchdy informed Monger that he would no longer discuss potential reasonable

1 accommodations with him, and that Monger had to deal exclusively with Martinez, who had
2 consistently refused to provide such accommodations and had, in the past, attempted to prevent
3 him from leaving work at any time for medical appointments. In the following months, IEC's
4 consistent refusals to provide requested reasonable accommodations continued through
5 Monger's ongoing dialogue with Martinez regarding his work hours and doctor's appointments,
6 and Martinez's denial of breaks and harassment of Monger for his bathroom usage. In August
7 2006, Martinez again decreed that Monger could no longer take any time off for medical
8 appointments, at which point Monger again asserted his legal rights. Martinez then barred him
9 from returning to work after his surgery until he had recovered full use of his arm, even though
10 IEC had ample work not requiring Monger to use both arms. In response to that, in September
11 2006, Monger again asserted his legal rights to specific reasonable accommodations, this time by
12 submitting a letter through SFHRC. Martinez never responded to Monger's request or the
13 SFHRC letter, denying Monger any accommodation and instead beginning to craft each weekly
14 IEC work schedule to deny Monger hours, before eventually terminating him in February 2007.

15 161. IEC's refusals to provide reasonable accommodations to Monger from May 2006
16 through February 2007 were all interrelated and similar in nature; they each involved Monger's
17 work schedule and right to take time off for medical appointments. The retaliatory acts occurred
18 regularly and frequently, and together formed an ongoing course of retaliatory conduct towards
19 Monger. Further, because IEC had frequently changed its position on Monger's work hours and
20 right to see his doctors during work hours, either in response to Monger's assertion of his rights,
21 Rouchdy's intervention with Martinez, or Martinez changing her own mind, a reasonable person
22 in Monger's position would not have believed that any of IEC's adverse actions were final.
23 Indeed, Monger continued to negotiate each issue with IEC until IEC terminated him,
24 recognizing that IEC could still alter its illegal practices, as it had altered its position before.

25 162. Monger requested that IEC adjust his work schedule and/or allow him to complete
26 some work from off-site to accommodate his disability, including the side effects of his AIDS
27 medications and his required regular doctor visits.

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1 163. Monger informed IEC that the accommodations he requested were necessary
2 because of his disability.

3 164. IEC repeatedly refused Monger's requests for accommodations.

4 165. The schedule adjustments Monger requested were reasonable and would not
5 affect his ability to fulfill the essential duties of his position or interfere with IEC's business.

6 166. IEC allowed other, non-disabled employees to have flexible work schedules
7 and/or to work from home.

8 167. As a direct and proximate result of IEC's failure to provide reasonable
9 accommodations, Monger has suffered harm including, but not limited to, loss of income and
10 emotional distress.

11 168. IEC's unlawful conduct was committed by Rouchdy and Martinez, who are both
12 IEC officers and managing agents. Rouchdy endorsed, approved, and/or ratified Martinez's
13 unlawful conduct toward Monger.

14 169. IEC's conduct was despicable and in willful and conscious disregard of Monger's
15 rights, and IEC acted toward Monger with malice, oppression, and fraud.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Failure to Engage in Good-Faith Interactive Process Regarding Reasonable**

18 **Accommodations under the ADA (Against IEC)**

19 170. Monger incorporates the preceding paragraphs by reference as though fully set
20 forth here.

21 171. As discussed above, at all times during Monger's Employment Period with IEC,
22 IEC was an employer subject to ADA, and Monger was an employee of IEC.

23 172. As described in greater detail above, throughout the Employment Period, Monger
24 had AIDS, which substantially limited him in his ability to perform multiple major life activities.

25 173. As described in greater detail above, both Rouchdy and Martinez knew Monger
26 was disabled and treated Monger as a disabled person during the Employment Period.

27 174. Monger was able to perform all essential duties of his job at IEC with reasonable
28 accommodations to his work schedule.

1 175. When Monger returned from his elbow surgery in September 2006, Monger asked
2 that IEC permit him to return to work with certain specified reasonable accommodations.
3 Monger caused the SFHRC to submit a formal letter to IEC asserting his legal rights and setting
4 forth specific requested reasonable accommodations. Monger informed IEC that the
5 accommodations he requested were necessary because of his disability. Similarly, the schedule
6 adjustments Monger requested were reasonable and would not affect his ability to fulfill the
7 essential duties of his position or interfere with IEC's business. IEC allowed other, non-disabled
8 employees many of the reasonable accommodations Monger had requested, including flexible
9 work schedules and/or the right to work from home.

10 176. IEC never responded to the SFHRC letter, refusing to answer Monger's request
11 for a reasonable accommodation during the remainder of his time at IEC. Instead, IEC began
12 crafting its work schedule each week to deprive Monger of substantial work hours and deny
13 Monger the reasonable accommodations he had requested. By doing so, IEC repeatedly refused
14 Monger's requests for a reasonable accommodation and failed to engage in a good-faith
15 interactive process with Monger to determine effective reasonable accommodations for
16 Monger's disability.

17 177. As a direct and proximate result of IEC's failure to engage in a good-faith
18 interactive process regarding reasonable accommodations for Monger's disability, Monger has
19 suffered harm including, but not limited to, loss of income and emotional distress.

20 178. IEC's unlawful conduct was committed by Rouchdy and Martinez, officers and
21 managerial employees acting within the scope of their employment.

22 179. IEC, Rouchdy, and Martinez intentionally violated the ADA, acting with malice
23 and/or a reckless disregard for Monger's rights.

24 **EIGHTH CLAIM FOR RELIEF**

25 **Failure to Engage in Good-Faith Interactive Process Regarding Reasonable**
26 **Accommodations under FEHA (Against IEC)**

27 180. Monger incorporates the preceding paragraphs by reference as though fully set
28 forth here.

1 181. As discussed above, at all times during Monger's Employment Period with IEC,
2 IEC was an employer subject to the California Fair Employment and Housing Act ("FEHA"),
3 and Monger was an employee of IEC.

4 182. As described in greater detail above, throughout the Employment Period, Monger
5 had AIDS, which is expressly recognized under FEHA as a qualifying disability per se.

6 183. As described in greater detail above, both Rouchdy and Martinez knew Monger
7 was disabled and treated Monger as a disabled person during the Employment Period.

8 184. Monger was able to perform all essential duties of his job at IEC with reasonable
9 accommodations to his work schedule.

10 185. When Monger returned from his elbow surgery in September 2006, Monger asked
11 that IEC permit him to return to work with certain specified reasonable accommodations.
12 Monger caused the SFHRC to submit a formal letter to IEC asserting his legal rights and setting
13 forth specific requested reasonable accommodations. Monger informed IEC that the
14 accommodations he requested were necessary because of his disability. Similarly, the schedule
15 adjustments Monger requested were reasonable and would not affect his ability to fulfill the
16 essential duties of his position or interfere with IEC's business. IEC allowed other, non-disabled
17 employees numerous of the reasonable accommodations Monger had requested, including
18 flexible work schedules and/or the right to work from home.

19 186. IEC never responded to the SFHRC letter, refusing to answer Monger's request
20 for a reasonable accommodation during the remainder of his time at IEC. Instead, IEC began
21 crafting its work schedule each week to deprive Monger of substantial work hours and deny
22 Monger the reasonable accommodations he had requested. By doing so, IEC repeatedly refused
23 Monger's requests for a reasonable accommodation and failed to engage in a good-faith
24 interactive process with Monger to determine effective reasonable accommodations for
25 Monger's disability.

26 187. Moreover, IEC's pattern of refusing to engage Monger in a good-faith interactive
27 process to determine effective reasonable accommodations for Monger's disability constituted a
28 continuing violation of his rights under FEHA. Monger first informed IEC that he required

1 reasonable accommodations in January 2006, at his initial interview with Rouchdy. Rouchdy
2 agreed that IEC would reasonably accommodate Monger by permitting him to begin work at
3 8:30 a.m. rather than 8:00 a.m. IEC began refusing Monger's requested reasonable
4 accommodations in March 2006, when Martinez rescinded Rouchdy's reasonable
5 accommodation and insisted that Monger begin coming to work at 8:00 a.m. Martinez also
6 forbade Monger from leaving work to see his doctors, although Rouchdy later overruled
7 Martinez on that point. In May 2006, when Monger formally requested that IEC obey the law
8 and reinstate the original reasonable accommodation Rouchdy had granted him in January 2006,
9 Martinez refused, requiring Monger to be at work at 8:00 a.m. on days when he needed to take
10 time off for medical appointments. Because Monger averaged four doctor's appointments every
11 week, Martinez's ruling forced him to arrive at work each day at 8:00 a.m., and further had the
12 effect of discouraging Monger from seeing his doctors. As a result, Monger began missing
13 important doctor's appointments to avoid causing problems at work. IEC's consistent refusals to
14 engage in a good-faith interactive process continued through Monger's ongoing dialogue with
15 Martinez regarding his work hours and doctor's appointments, and Martinez's denial of breaks
16 and harassment of Monger for his bathroom usage. In June 2006, Rouchdy further displayed
17 IEC's hostility to a good-faith interactive process by informing Monger that Monger could no
18 longer bring requests to Rouchdy, but instead would have to deal solely with Martinez, who had
19 consistently behaved unreasonably and was the source of Monger's problems at IEC. In August
20 2006, Martinez again decreed that Monger could no longer take any time off for medical
21 appointments, at which point Monger again asserted his legal rights. Rather than engaging in a
22 good-faith interactive process at that point, Martinez barred him from returning to work after his
23 surgery until he had recovered full use of his arm, even though IEC had ample work not
24 requiring Monger to use both arms. In response to that, in September 2006, Monger yet again
25 asserted his legal rights to specific reasonable accommodations, this time through SFHRC.
26 Martinez never responded to Monger's request or the SFHRC letter, denying Monger any
27 accommodation and instead beginning to craft each weekly IEC work schedule to deny Monger
28 hours, before eventually terminating him in February 2007.

1 188. From May 2006 through February 2007, IEC's failure to engage in a good-faith
2 interactive process regarding a reasonable accommodation of Monger's disability was an
3 ongoing course of unlawful conduct towards Monger, including both IEC's affirmative refusals
4 to engage in that process at Monger's request and its silent failure to do so at any other time.
5 Each refusal to engage in good faith involved Monger's work schedule and right to take time off
6 for medical appointments, and related wrongful acts occurred regularly and frequently. Further,
7 because IEC had frequently changed its position on accommodating Monger's disability through
8 altering his work schedule and permitting him to see his doctors during work hours, either in
9 response to Monger's assertion of his rights, Rouchdy's intervention with Martinez, or Martinez
10 changing her own mind, a reasonable person would not have believed that any of these adverse
11 actions were final. Indeed, Monger continued to negotiate each issue with IEC until IEC
12 terminated him, recognizing that IEC could still alter its illegal practices, as it had altered its
13 position before.

14 189. As a direct and proximate result of IEC's failure to engage in a good-faith
15 interactive process regarding reasonable accommodations for Monger's disability, Monger has
16 suffered harm including, but not limited to, loss of income and emotional distress.

17 190. IEC's unlawful conduct was committed by Rouchdy and Martinez, who are both
18 IEC officers and managing agents. Rouchdy endorsed, approved, and/or ratified Martinez's
19 unlawful conduct toward Monger.

20 191. IEC's conduct was despicable and in willful and conscious disregard of Monger's
21 rights, and IEC acted toward Monger with malice, oppression, and fraud.

22 **NINTH CLAIM FOR RELIEF**

23 **Wrongful Adverse Employment Actions in Violation of Public Policy (Against IEC)**

24 192. Monger incorporates the preceding paragraphs by reference as though fully set
25 forth here.

26 193. As the California courts repeatedly have recognized, California has a fundamental
27 and substantial public policy of protecting employees from adverse employment actions made
28 because of disability discrimination or in retaliation for complaints about discrimination or

1 failure to provide reasonable accommodations.

2 194. As described above, Monger has a qualifying physical disability under California
3 law, IEC perceived him as disabled, and Monger attempted to exercise his rights to reasonable
4 accommodations and non-discriminatory treatment on the job.

5 195. IEC consistently mistreated Monger because of his disability and his attempts to
6 enforce his rights under federal and state law. Most obviously, when Monger returned to work
7 after his elbow surgery in September 2006, and submitted a complaint from SFHRC asserting his
8 right to work with certain specified reasonable accommodations, IEC responded by repeatedly
9 scheduling Monger for only minimal hours throughout the fall and winter of 2006 and 2007, as
10 opposed to his previous full-time schedule. IEC cut Monger's work hours even though it had
11 enough work to permit Monger to work full-time and Monger was an outstanding employee who
12 had repeatedly received commendations from IEC supervisors and clients. IEC then completed
13 its retaliation campaign by terminating Monger's employment on February 2, 2007.

14 196. Monger's disability and/or his attempts to exercise his rights to non-
15 discriminatory treatment and reasonable accommodations were a motivating reason for IEC's
16 adverse employment actions and termination of Monger.

17 197. IEC's stated reasons for reducing Monger's work hours and for terminating him
18 were false and pretextual. Monger discovered that IEC's stated reason for limiting his work
19 hours and then terminating him—the absence of interpretation work—was false only in March
20 2008, when he learned that IEC had regained the Contra Costa County hospital contract and the
21 associated interpretation work. In any event, IEC easily could have transitioned him to written
22 translation work, which Monger was qualified to perform and had been performing during his
23 time at IEC. IEC had sufficient available translation work to retain Monger as an employee.

24 198. As a direct and proximate result of IEC's adverse employment actions and
25 termination, Monger has suffered harm including, but not limited to, loss of income and
26 emotional distress.

27 199. IEC's unlawful conduct was committed by Rouchdy and Martinez, who are both
28 IEC officers and managing agents. Rouchdy endorsed, approved, and/or ratified Martinez's

1 unlawful conduct toward Monger.

2 200. IEC's conduct was despicable and in willful and conscious disregard of Monger's
3 rights, and IEC acted toward Monger with malice, oppression, and fraud.

4 **TENTH CLAIM FOR RELIEF**

5 **Non-payment of Wages and Overtime Wages in Violation of Fair Labor Standards Act**
6 **(Against All Defendants)**

7 201. Monger incorporates the preceding paragraphs by reference as though fully set
8 forth here.

9 202. During Monger's Employment Period, IEC was an employer within the meaning
10 of the FLSA, 29 U.S.C. § 201 *et seq.*

11 203. Upon information and belief, both Rouchdy and Martinez exercised operational
12 control of IEC during the Employment Period, including determining the payment and
13 nonpayment of wages.

14 204. During the Employment Period, Monger was an employee of IEC who performed
15 work for IEC. Throughout his time at IEC, Monger periodically worked overtime hours.

16 205. IEC failed to pay Monger in a timely manner for all of the hours he worked. IEC
17 also failed to pay Monger proper overtime wages, namely 1 1/2 times his regular hourly wage,
18 for all of the overtime hours he worked under the FLSA.

19 206. Monger's employment ended on February 2, 2007.

20 207. As of today, IEC still has not paid Monger his full wages owed for his work at
21 IEC, including overtime wages.

22 208. IEC's failure to pay wages was not in subjective and objective good faith, and
23 Monger is entitled to liquidated damages equal to all delayed and unpaid wages.

24 **ELEVENTH CLAIM FOR RELIEF**

25 **Non-payment of Wages and Overtime Wages (Against IEC)**

26 209. Monger incorporates the preceding paragraphs by reference as though fully set
27 forth here.

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1 210. During the Employment Period, Monger was an employee of IEC who performed
2 work for IEC. Throughout his time at IEC, Monger periodically worked overtime hours.

3 211. IEC failed to pay Monger in a timely manner for all of the hours he worked. IEC
4 also failed to pay Monger proper overtime wages, namely 1 1/2 times his regular hourly wage,
5 for all of the overtime hours he worked under California law.

6 212. Monger's employment ended on February 2, 2007.

7 213. IEC failed to pay Monger all of his wages owed on the day of his termination. As
8 of today, IEC still has not paid Monger his full wages owed, including overtime wages.

9 **TWELFTH CLAIM FOR RELIEF**

10 **Denial of Rest and Meal Breaks (Against IEC)**

11 214. Monger incorporates the preceding paragraphs by reference as though fully set
12 forth here.

13 215. Throughout Monger's employment at IEC, IEC refused to permit Monger to take
14 and/or discouraged Monger from taking rest and meal breaks to which he was entitled under
15 California law.

16 216. Monger is entitled to payment of the meal and rest period premiums provided by
17 California law for IEC's violations of his rights to meal and rest periods.

18 217. IEC has not paid Monger any meal or rest period premiums.

19 **THIRTEENTH CLAIM FOR RELIEF**

20 **Waiting Time Penalties under the California Labor Code (Against IEC)**

21 218. Monger incorporates the preceding paragraphs by reference as though fully set
22 forth here.

23 219. IEC terminated Monger's employment with the company on February 2, 2007.

24 220. IEC failed to pay Monger his full wages owed (including regular wages, overtime
25 wages, and meal and rest break premiums) immediately upon his termination.

26 221. As of today, IEC still has not paid Monger his full wages owed.

27 222. IEC's failure to pay Monger's full wages has been willful and not in good faith.

28 ///

FOURTEENTH CLAIM FOR RELIEF

Failure to Provide Accurate Itemized Wage Statements (Against IEC)

223. Monger incorporates the preceding paragraphs by reference as though fully set forth here.

224. California Labor Code § 226(a) requires employer to provide itemized wage statements at the time of each payment of wages indicating, among other things, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each.

225. IEC failed to provide Monger with adequate itemized wage statements complying with section 226. For example, even when IEC provided Monger with an official wage statement—which it did only for his work on or after July 27, 2006—IEC’s wage statements do not include overtime pay rates or identify overtime hours.

226. IEC’s failure to provide adequate wage statements was knowing and intentional.

227. IEC’s failure to provide adequate wage statements harmed Monger, including but not limited to by preventing him from knowing the true amount of wages IEC owed to him.

228. Monger is entitled to recover the greater of his actual damages from IEC’s failure to provide adequate wage statements or a penalty of \$50 for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Monger prays that this Court enter judgment in his favor and grant the following relief against all the defendants and each of them jointly and severally (for those claims brought against more than one defendant):

1. Compensatory and general damages in an amount to be determined according to proof, and including but not limited to lost wages and emotional distress damages;

2. Back pay and front pay in an amount to be determined according to proof;

3. All forms of penalty wages, liquidated damages, or any other statutory penalties permitted by law;

1 4. Punitive and exemplary damages in an amount to be determined at trial;

2 5. Permanent injunctive relief prohibiting defendants from engaging in similar future
3 discriminatory, retaliatory, or otherwise unlawful practices towards employees with actual or
4 perceived disabilities;

5 6. Costs, expenses, and reasonable attorneys' fees in an amount to be determined
6 according proof;

7 7. Interest at the maximum legal rate on all monetary awards, including prejudgment
8 interest to the full extent permissible by law; and

9 8. All other forms of legal or equitable relief that the Court deems just and proper.

10 **JURY DEMAND**

11 Monger hereby demands a jury trial for all issues so triable.

12
13 Dated: August 28, 2008

KEKER & VAN NEST, LLP

14
15
16 By: 

DANIEL PURCELL
Attorneys for Plaintiff
MARLON MONGER

EXHIBIT A

* * * EMPLOYMENT * * *

COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200708 A-0430-00-mpre

EEOC # 37AA804043

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (Indicate Mr. or Ms.)

(Mr.) Marlon Monger

ADDRESS

462 Duboce Avenue

TELEPHONE NUMBER (INCLUDE AREA CODE)

(415) 279-1482

CITY

San Francisco

STATE

CA

ZIP

94117

COUNTY

San Francisco

COUNTY CODE

075

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP
COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

International Effectiveness Center

ADDRESS

360 Pine Street, Third Floor

TELEPHONE NUMBER (INCLUDE AREA CODE)

(800) 292-9246

CITY

San Francisco

STATE

CA

ZIP

94104

COUNTY

San Francisco

COUNTY CODE

075

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

☐ RACE☐ SEX☒ DISABILITY☐ RELIGION☐ NATIONAL ORIGIN/ANCESTRY☐ DENIAL OF FAMILY/MEDICAL LEAVE☐ SEXUAL ORIENTATION☐ COLOR☐ AGE☐ MARITAL STATUS☐ MEDICAL CONDITION (cancer or genetic characteristics)☐ OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS

50

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) February 2, 2007

RESPONDENT CODE

073

THE PARTICULARS ARE:

- I. On or about February 2, 2007, I was denied a reasonable accommodation and terminated. In or about January, 2006, I was hired as an Interpreter. At the time of the termination, I was earning \$20.00 per hour.
- II. Taryk Rouchdy, Supervisor, told me, "The low volume of telephone interpreting can no longer sustain an in-house employee."
- III. I believe I was denied a reasonable accommodation and terminated on the basis of my disability (AIDS). Also, I believe I was terminated in retaliation for opposing practices I believe to be unlawful under the California Fair Employment and Housing Act. My belief is based on the following:
 - A. From January, 2006, through February 2, 2007, my employer was notified of my medical disability and request for a reasonable accommodation. In May, 2006, my request to adjust my hours to report to work at 8:30 a.m. due to side effects of my prescribed medications was denied. In or about August, 2006, my employer was notified of my elbow surgery. I was denied time off for doctors' appointments and I reported a complaint of discrimination.
 - B. In or about September, 2006, after returning to work from medical treatment, my employer stopped my job assignments at Children's Hospital.
 - C. On September 14, 2006, I was released to return to work with restrictions not to use my right hand. Although my physician indicated that I can continue performing interpreter duties, my reasonable accommodation was denied and my work hours were reduced from approximately 40 hours per week to four (4) to six (6) hours per week.
 - D. From September 13, 2006 to February 7, 2007, my employer continued to deny me a reasonable accommodation and I continued to report that I believed the decision was discrimination.
 - C. On February 7, 2007, I was terminated. I believe my disability was a factor used in the decision to deny me a reasonable accommodation, job transfer and terminate me, which is a violation of the Fair Employment and Housing Act.

Typed September 19, 2007, October 23, 2007

☒ I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

10/25/07

At

San Francisco, CA

City

COMPLAINANT'S SIGNATURE

DATE FILED: October 29, 2007

DFEH-300-01 (12/99)

SF:ts

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

BY SAN FRANCISCO OFFICE OF CALIFORNIA

EXHIBIT B

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1515 Clay Street, Suite 701, Oakland, CA 94612
(510) 622-2973 TTY (800) 700-2320 Fax (510) 622-2952
www.dfeh.ca.gov



October 31, 2007

MARLON MONGER
462 Duboce Avenue
San Francisco, CA 94117

RE: E200708A0430-00-mpre/37AA804043
MONGER/INTERNATIONAL EFFECTIVENESS CENTER

Dear MARLON MONGER:

NOTICE OF CASE CLOSURE

The consultant assigned to handle the above-referenced discrimination complaint that was filed with the Department of Fair Employment and Housing (DFEH) has recommended that the case be closed on the basis of: Processing Waived To Another Agency.

Please be advised that this recommendation has been accepted and the case has been closed effective October 31, 2007.

This letter is also your Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of Government Code section 12948 which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of this letter. However, if your civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, you should consult an attorney about the applicable statutes of limitation. If a settlement agreement has been signed resolving the complaint, it is likely that your right to file a private lawsuit may have been waived.

Notice of Case Closure
Page Two

This case may be referred to the U.S. Equal Employment Opportunity Commission (EEOC) for further review. If so, pursuant to Government Code section 12965, subdivision (d)(1), your right to sue will be tolled during the pendency of EEOC's review of your complaint.

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Herbert Yarbrough
District Administrator

cc: Case File

Taryk Rouchdy
Supervisor
INTERNATIONAL EFFECTIVENESS CENTER
360 Pine St., Third Floor
San Francisco, CA 94104

DFEH-200-08e (06/06)
ASMITH

EXHIBIT C

EEOC Form 161-B (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Marlon Monger
c/o Alyse D. Bertenthal
Law Offices of Kecker & Van Nest LLP
710 Sansome Street
San Francisco, CA 94111-1704

From: San Francisco District Office
350 The Embarcadero
Suite 500
San Francisco, CA 94105

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

37A-2008-04043

Hannah Lai,
Investigator

(415) 625-5664

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

☒

More than 180 days have passed since the filing of this charge.

☐

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

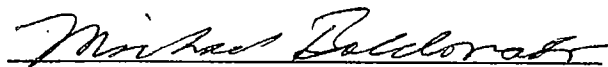
☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Michael Baldonado,
Acting Director

8/20/08
(Date Mailed)

Enclosures(s)

cc: Interntaional Effectiveness Center
c/o Michele Ballard Miller
Miller Law Group
500 Sansome Street, Suite 400
San Francisco, CA 94111

Enclosure with EEOC
Form 161-B (3/98)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit **before 7/1/02** – not 12/1/02 – in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.